

## **SETTLEMENT AGREEMENT**

This Settlement Agreement (the “Agreement”) is made and entered into by and between Plaintiff Frances O’Brien (“Plaintiff”) on behalf of herself and all other purchasers of Procera AVH (the “Product”), by and through her counsel and class counsel, Harold M. Hoffman (“Class Counsel”), on the one hand, and, on the other hand, Brain Research Labs, LLC, a Delaware LLC (“BRL”), by and through its counsel, Manatt, Phelps & Phillips, LLP, compromising on a class wide basis all claims in the case entitled *Frances O’Brien v. Brain Research Labs, LLC*, United States District Court for the District of New Jersey, Case No. 12-cv-00204-FSH-PS (the “Action”), subject to Court approval. The “Date of Settlement” shall be the date on which all parties hereto have executed this Agreement.

### **RECITALS**

A. Plaintiff commenced the Action on January 11, 2012. The Action alleges a nationwide class action of all purchasers of the Product from January 11, 2006, to the present. The Action alleges that the Product was sold in violation of various State laws and was sold using advertisements and packaging that were false and misleading. The Action asserts five counts under the New Jersey Consumer Fraud Act and one count for common law fraud.

B. During the Class Period (as defined in Paragraph 1(D)), Defendant BRL has made more than 99% of the sales of the Product through Direct Marketing Channels, and has made less than 1% of the sales of the Product through retail channels. The term “Direct Marketing Channels” refers to (1) sales made through customer call centers, as directed through TV, print, and radio advertisements, and (2) sales made through the Internet, on the official Product website(s).

C. BRL maintains the last known contact information for the Class Members who purchased the Product through Direct Marketing Channels.

D. BRL denies all of Plaintiff’s allegations in the Action and maintains that the Product and all of its advertising and labeling at all times was and is in compliance with all applicable laws, statutes, and regulations, as well as all policies adopted by applicable regulatory

agencies, and that all such advertising and labeling at all times was and is substantiated and not false or misleading. BRL believes that it has meritorious defenses to all of the claims asserted in the Action, and specifically denies that it engaged in any unlawful actions. This Agreement does not constitute and shall not be construed as an admission by BRL of any liability or wrongdoing and BRL expressly denies any such liability or wrongdoing.

E. The Plaintiff and BRL (the “Parties”) in the Action have engaged in substantial discovery. Specifically, among other things, Plaintiff has received copies of BRL’s advertisements, labeling, packaging, and websites, as well as copies of clinical studies and other documents regarding the Product and its principal active ingredients. In addition, Plaintiff has received copies of BRL’s nationwide sales records from January 2005 to the present.

F. Plaintiff has not yet filed a motion for certification of a class in the Action.

G. The Parties have conducted arms-length negotiations in an attempt to resolve the Action.

H. Based upon the investigation, analysis, and discovery conducted by Class Counsel, Plaintiff and Class Counsel have agreed to settle the claims raised in the Action on a nationwide basis under the terms and conditions memorialized in this Agreement, believing the settlement to be fair, reasonable, adequate, and in the best interests of Plaintiff and the Settlement Class Members (as defined in Paragraph 1(C) below). Although Plaintiff and Class Counsel believe that the claims asserted in the Action are meritorious, they have concluded that this Settlement is in the best interests of the class after considering the benefits that the class will obtain in relation to the risks of pursuing further litigation.

I. The Parties wish to avoid the expense, risk and uncertainty of further litigation, to resolve all disputes that have arisen between them, and to settle any and all claims that do or may exist in the past, present or future, and therefore have agreed to enter into this Agreement.

NOW, THEREFORE, for and in consideration of the promises, covenants, and undertakings described below, and intending to be mutually bound thereby, and for other good and sufficient consideration, the Parties agree, subject to the Court’s approval, as follows:

## **PROPOSED CLASS FOR SETTLEMENT PURPOSES**

### **1. Class Definition and Certification, Class Representative, and Class Counsel.**

(A) **Settlement Class Definition and Certification.** For purposes of this Agreement, the Parties hereby stipulate to the certification of the following Settlement Class:

All residents of the United States who purchased the Product during the Class Period (as defined in Paragraph 1(D) below) through Direct Marketing Channels or through retail. Purchasers who have received a refund or debit/credit card chargeback of the purchase price for one or more bottles of the Product at any time shall NOT be included in the Settlement Class. (The "Settlement Class Definition.")

(B) **Stipulation Regarding Conditional Certification.** The Parties stipulate and agree that, for the purposes of the settlement embodied in this Agreement only, and subject to Court approval, the Settlement Class described in Paragraph 1(A) above should be certified. If, for any reason, this Agreement is not approved by the Court, the stipulation for certification and all of the agreements contained herein shall be considered null and void and may not be referred to or used as evidence or for any other purpose whatsoever in the Action or any other action or proceeding.

(C) **Settlement Class Members.** All persons residing in the United States who fit within the Class Definition are "Settlement Class Members."

(D) **Class Period.** The Class Period is from January 1, 2005 until the date on which the Court grants preliminary approval of this settlement.

(E) **Class Representative.** Subject to Court approval, Plaintiff Frances O'Brien shall be appointed by the Court as the Class Representative of this Settlement Class.

(F) **Class Counsel.** Harold M. Hoffman, Esq. shall be appointed as Class Counsel.

## **BENEFITS TO THE CLASS**

### **2. Cash Payments and Savings Vouchers to Settlement Class Members.**

(A) Settlement Class Members with Valid Claims (as described in Paragraph 3 below) shall be eligible to receive *either*:

- (i) A single cash payment of twenty dollars (\$20) (the “Cash Payment”); *or*
- (ii) A savings voucher for 50% off of the subsequent purchase of any of the following BRL products: (1) Procera AVH; (2) Ceraplex; (3) Omega-3 DHA; (4) Gabarest; or (5) 20/20 BrainPower Book (the “BRL Products”), each of which has a manufacturer’s suggested retail price (MSRP) of between \$19.95 and \$69.95 per unit (the “Savings Voucher”).

**(B) Cash Payments.** BRL agrees to pay up to \$500,000 in Cash Payments to Settlement Class Members with Valid Claims. If the amount of the Valid Claims submitted requesting a Cash Payment exceeds \$500,000, then the amount paid to each Settlement Class Member who submitted a Valid Claim requesting a Cash Payment shall be reduced on a pro rata basis so that the total payments made by BRL pursuant to this Settlement shall not exceed \$500,000.

**(C) Savings Vouchers.** Each Settlement Class Member may use one (1) Savings Voucher towards the purchase of the BRL Products. The Savings Vouchers shall be transferrable, shall not have any expiration date, and shall not contain any other restrictions. There shall be no limit to the number of Savings Vouchers that may be distributed to Settlement Class Members pursuant to this Settlement.

(D) The Cash Payments and Savings Vouchers shall be distributed by email or U.S. Mail consistent with the methods for providing notice pursuant to Paragraph 9 below, in accordance with the contact information maintained by BRL.

3. **Claims Process.** Each Settlement Class Member shall be entitled to submit a claim.

(A) To be eligible for a Cash Payment or Savings Voucher pursuant to this Agreement, a Settlement Class Member must submit a claim online that (i) is submitted no later than thirty (30) days after the Fairness Hearing (defined in Paragraph 10(E) below) (the “Claims Deadline”), (ii) contains all of the required information set forth in the claim form, (iii) satisfies the requirements of this Settlement and the terms of the claim form, and (iv) is signed electronically by the Settlement Class Member submitting the claim. A claim that satisfies all of the terms of this Paragraph 3(A) shall be a “Valid Claim” and shall be considered for distribution of a Cash Payment or Savings Voucher according to Paragraphs 3(B)-(D).

(B) Settlement Class Members who submit a Valid Claim stating that they purchased the Product at least one time during the Class Period and have not received a refund or debit/credit card chargeback for the Product at any time, and complete and sign the claim form attached as **Exhibit A** hereto, shall be entitled to receive a Cash Payment or Savings Voucher as described in Paragraph 2 above, at their own election.

(C) The Settlement Administrator shall review and adjudicate all claims no later than seventy-five (75) days after the Effective Final Judgment Date (as defined in Paragraph 14 below). Timing of payments to Settlement Class Members shall be in accordance with Paragraph 15 below.

(D) Settlement Class Members may submit one claim. If a claimant submits more than one claim, only the first claim will be considered for the Cash Payment or Savings Voucher (whichever was elected by the claimant) and the remaining claims will be denied.

(E) No later than seventy-five (75) days after the Effective Final Judgment Date, the Settlement Administrator shall provide a final report to the Parties stating the total number and dollar amount of Valid Claims that are to be paid, and the total number of Savings Vouchers that are to be distributed.

#### **4. Advertising Standards and Revisions.**

(A) **Advertising Revisions and Standards.** For a period of two (2) years following entry of the Final Judgment and Order (as defined in Paragraph 13 below), BRL shall not make any of the following statements in any advertising or labeling unless such statement is (a) found not to violate the law, (b) found to be permissible by a self-regulatory advertising entity or body, or (c) supported by an appropriate scientific or clinical study or other competent and reliable evidence that substantiates the representations:

(i) That the Product or any of its ingredients “will protect the brain following a head injury or stroke.”

(ii) That the Product or any of its ingredients “will accelerate the healing of damaged neurons.”

(iii) That the Product or any of its ingredients “will increase levels of nerve growth factor.”

(iv) That the Product or any of its ingredients “will protect the brain or the liver from the harmful byproducts of alcohol.”

(v) That the Product or any of its ingredients “will reduce depression.”

- (vi) That the Product or any of its ingredients “will remove or help remove lipofuscin.”
- (vii) That the Product or any of its ingredients are “clinically shown to quickly improve energy.”
- (viii) That the Product or any of its ingredients “will improve or increase IQ.”
- (ix) That the Product or any of its ingredients “are deemed safe and effective by the FDA.”
- (x) That the Product or any of its ingredients “are key, vital or brain essential nutrients that cannot be obtained from food.”
- (xi) That the Product or any of its ingredients “will prevent, delay the onset of, reduce the effects of, treat, or cure Alzheimer’s Disease or dementia.”

**(B) Third Party Sellers/Advertisers.** BRL shall take all reasonable steps to assure that no other entity that sells the Product does so in any manner that is contrary to the requirements set forth in Paragraph 4 of this Agreement.

**(C) Revisions to Labeling.** BRL shall take all reasonable steps to assure that the labeling of the Product discloses relevant significant potential adverse interactions with drugs (prescription and over-the-counter) and other dietary supplements.

**(D) Existing Stock of Labeling; Timing of Revisions.** Plaintiff recognizes that there are labels currently printed and in stock and/or physically attached to bottles of the Product which may not comply with all applicable standards as set forth herein, that are currently progressing through BRL’s distribution system. BRL shall be permitted to distribute and sell any Product (whether at wholesale or retail) with these labels until six (6) months from

the date of preliminary approval of this Agreement. All new labels to be printed and placed on the Product will be modified as proposed, and the BRL and Procera AVH websites and all print advertising for the Product will be modified consistent with this settlement, all to be accomplished within fifteen (15) days from the Final Approval of this settlement, as described in Paragraph 13 below.

**(E) Exclusive Remedy for Alleged Breaches of this Agreement.** For two (2) years following the entry of the Final Judgment and Order (as defined in Paragraph 13 below), if Plaintiff, through Class Counsel, observes advertising that Class Counsel believes breaches the terms of this Agreement, then Class Counsel can send a letter to BRL's counsel identifying that challenged statement and provide BRL thirty (30) days to "cure" such alleged false advertising. If Class Counsel and BRL's counsel disagree on whether the advertising is compliant with this agreement, the Parties agree to take the dispute to binding arbitration, in a session not to exceed two hours, to obtain a ruling as to whether the challenged language violates applicable law, and the Parties agree to be bound by that arbitrator's ruling. In such process, the Parties may each submit briefs of no more than 5 pages. The prevailing party shall be entitled to reasonable attorney's fees not to exceed \$1,000.00 per incident. The arbitrator's fee will be paid by the non-prevailing party. The arbitrator shall determine the prevailing party, and if no party is deemed prevailing, then no attorney's fee shall be awarded and each party shall pay one-half of the arbitrator's fee.

**5. New Dietary Ingredient Notification.** BRL agrees to file a New Dietary Ingredient ("NDI") notification(s) with the Food and Drug Administration ("FDA") for the ingredients contained in the Product within 180 days after the FDA finalizes (i.e. publishes to the dietary supplement industry) its final guidance document, bearing docket number FDA-2011-D-



0376, providing clarification and direction for filing an NDI notification, to the extent that such final guidance document requires any such filing(s).

6. **Award of Attorneys' Fees and Costs.** At the Final Settlement Hearing, Class Counsel shall petition the Court in the Action to enter an order for an award of attorneys' fees and costs not to exceed \$75,000. BRL agrees not to oppose Class Counsel's request for fees and costs if limited to this amount. The payment shall be made within 30 days of the Effective Final Judgment Date, as defined in Paragraph 14 below.

BRL shall not object to Class Counsel's petition for attorneys fees and the class representative incentive award indicated below, provided the requests do not exceed the amounts set forth in this Agreement, and if the requests are consistent with this Agreement, BRL will support the applications for Court approval.

7. **Class Representative Incentive Payment.** Subject to Court approval, BRL will pay Plaintiff Frances O'Brien \$2,500.00 for her role as Class Representative in the Action.

#### **SETTLEMENT ADMINISTRATION**

8. **Settlement Administration.** The Parties agree that Gilardi & Co. LLC shall serve as the third-party administrator of the settlement ("Settlement Administrator"). The Settlement Administrator will work under the direction of Settlement Class Counsel and counsel for BRL. The Settlement Administrator shall be responsible for setting up a settlement website where Settlement Class Members can, among other things, fill out the claim form and view this Agreement; distribution of the Notice of Settlement (as described in Paragraph 9 below) and the administration of the Settlement, including confirming purchase verifications or certifications, if any; determining Valid Claims; distributing all Cash Payments and Savings Vouchers pursuant to Paragraphs 2 and 3 above; maintaining proper records of the settlement administration; and

providing information and reports to counsel for BRL and Class Counsel. All costs related to such claims administration shall be borne by BRL.

9. **Notice of Settlement.** Within ten (10) days after preliminary approval of the settlement by the Court each Settlement Class Member who purchased the Product through Direct Marketing Channels shall be provided with a notice of settlement (i) describing the terms of the proposed settlement and the opportunity to obtain the Cash Payment or Savings Voucher described in Paragraph 2 above, (ii) directing the Settlement Class Member to a settlement website describing the claims process and providing a claim form, and (iii) providing a toll-free number Settlement Class Members can call with questions (“Notice of Settlement”). Such notice shall be provided by email to any Settlement Class Member for whom BRL has an email address, and by First Class U.S. Mail to the last known mailing address of each such Settlement Class Member for whom BRL does not have an email address. The Parties agree that the content of the Notice of Settlement of Class Action sent via email and U.S. Mail shall be substantially in the form attached to this Agreement as **Exhibit B**. The Parties further agree that the Notice of Settlement that appears on the settlement website shall be substantially in the form attached to this Agreement as **Exhibit C**.

#### **SETTLEMENT APPROVAL PROCESS**

10. **Preliminary Approval Order.** As soon as practicable after execution of this Agreement, the Parties shall file a motion for preliminary approval of the Settlement seeking entry of the Order Preliminarily Approving Class Action Settlement, Notice of Settlement, and Scheduling a Final Settlement Hearing (“Preliminary Approval Order”) substantially in the form attached as **Exhibit D** to this Agreement. The Preliminary Approval Order shall provide, *inter alia*, that:

(A) There is probable cause to believe that the Settlement proposed in this Agreement has been negotiated at arm's-length and is preliminarily determined to be fair, reasonable, and adequate, free of collusion among the Parties or any other indicia of unfairness, falling within the range of possible final judicial approval sufficient to warrant sending notice to the Class, and is in the best interest of the Settlement Class for settlement purposes;

(B) The proposed Notice of Settlement fully complies with the requirements of Fed. R. Civ. Pro. 23 and due process, constitutes the best notice practicable under the circumstances, and is due and sufficient notice to all persons entitled to notice of this Settlement;

(C) The deadline for Settlement Class Members (and if applicable, their attorneys) to postmark and file any objections, notices of intent to appear at the Fairness Hearing in support of any objection and (for attorneys) entry of appearances, is thirty (30) days after the date of transmission of the Notice of Settlement, and establishing the procedures for doing so, all as described in Paragraph 12 below;

(D) The Settlement Class is conditionally certified, with Plaintiff serving as Class Representative, and the attorneys and law firm listed in Paragraph 1(F) serving as Class Counsel, on the condition that the certification and designations shall be automatically vacated if the Settlement is terminated or is disapproved in whole or in part by the Court, any appellate court, or any of the Parties pursuant to the terms of the Agreement; and

(E) A final hearing on the Settlement proposed in this Agreement shall be held before the Court to determine whether it is fair, reasonable, and adequate, and whether it should be approved by the Court (the "Fairness Hearing").

(F) Settlement Class Members are enjoined from filing, commencing, prosecuting, intervening in, participating in, maintaining as class members or otherwise, directly

or indirectly through a representative or otherwise, or receiving any benefits from, any lawsuit, administrative or regulatory proceeding or order in any jurisdiction, asserting any claims released by this Agreement. All persons are preliminarily enjoined from filing, commencing or prosecuting a lawsuit as a class action (including by seeking to amend a pending complaint to include class allegations or by seeking class certification in a pending action in any jurisdiction) on behalf of Settlement Class Members, asserting any claims released by this Agreement. Nothing in this subparagraph, however, shall require any Settlement Class Member to take any affirmative action with regard to other pending class action litigation in which they may be absent class members; and

(G) Any attorney hired by a Settlement Class Member at the Settlement Class Member's expense for the purpose of objecting to this Agreement or the proposed Settlement, or any provision thereof, including the provisions relating to attorneys' fees, costs and litigation expenses, must file with the Clerk of the Court and deliver to Class Counsel and BRL's Counsel an entry of appearance and, if applicable, a notice of intention to appear at the Fairness Hearing, no later than thirty (30) days after the transmission of the Notice of Settlement. Any argument at the Fairness Hearing by objectors and/or their counsel will be restricted to the matters raised in a timely and validly submitted written objection filed by such objectors, as provided in Paragraph 12 below.

**11. Rights of Exclusion.** All Settlement Class Members who properly deliver to the Settlement Administrator a timely written request to opt-out of the Settlement shall be excluded from the Settlement Class, shall have no rights as members of the Settlement Class pursuant to this Agreement (including the right to object to the Settlement), and shall receive no Cash Payments or Savings Vouchers as provided herein. A request for exclusion by a member of the

Settlement Class must be in writing, identify the case name *O'Brien v. Brain Research Labs, LLC*, No. 12-cv-00204, and state the name, address, and telephone number of the Settlement Class Member(s) seeking exclusion. Each request must also contain a signed statement that: "I/We hereby request to be excluded from the proposed Settlement Class in *O'Brien v. Brain Research Labs, LLC*." The request must be mailed to the Settlement Administrator at the address provided in the Notice of Settlement and be postmarked no later than thirty (30) days from the date of the transmission of the Notice of Settlement. A request for exclusion that does not include all of the foregoing information, that is sent to an address other than the one designated in the Notice of Settlement, or that is not postmarked within the time specified, shall be invalid and the person(s) serving such a request shall be deemed a member(s) of the Settlement Class, and shall be bound as a Settlement Class Member(s) by the Settlement. The Settlement Administrator shall promptly forward copies of all requests for exclusion to Class Counsel and counsel for BRL.

**12. Right to Object or Comment.** Any member of the Settlement Class may comment in support of or in opposition to the Settlement and may do so in writing, in person, or through counsel, at his or her own expense, at the Fairness Hearing. Except as the Court may order otherwise, no Settlement Class Member objecting to the Settlement shall be heard and no papers, briefs, pleadings, or other documents submitted by any such Settlement Class Member shall be received and considered by the Court unless such Settlement Class Member shall both (A) appear in person at the Fairness Hearing and (B) file with the Court and mail to Class Counsel and counsel for BRL a written objection with the caption *O'Brien v. Brain Research Labs, LLC*, No. 12-cv-00204, that includes: (i) the Settlement Class Member's full name and current address; (ii) a signed declaration that he or she believes himself or herself to be a member

of the Settlement Class; (iii) the specific grounds for the objection; (iv) all documents or writings that such Settlement Class Member desires the Court to consider; and (v) a notice of intent to appear. All objections must be filed and postmarked no later than 30 days after the transmission of Notice of Settlement, or such date as the Court orders. Any Settlement Class Member who fails to object in the manner prescribed herein, or who does not restrict his or her argument at the Fairness Hearing to matters raised in a timely and validly submitted written objection, shall be deemed to have waived his or her objections and forever be barred from making any such objections in the Action or in any other action or proceeding. While the statement described in subsection (ii) above is prima facie evidence that the objection is a Settlement Class Member, Plaintiff and/or BRL may take discovery regarding the matter, subject to Court Approval.

**13. Order for Final Judgment.** If this Agreement is preliminarily approved by the Court, the Parties shall jointly request at the Fairness Hearing that the Court enter an order for final judgment that finally approves this Agreement and dismisses the claims of the Settlement Class Members without prejudice (“Final Judgment and Order”) (but see Paragraph 13(C) below for clarification on the meaning of “without” prejudice for the purposes of dismissal). The Fairness Hearing shall be held no earlier than twenty-eight (28) days after the deadline for all Settlement Class Members to opt-out of, object to, or comment upon the Settlement under Paragraphs 11 and 12 of this Agreement. A copy of the form of the proposed Final Judgment and Order agreed to by the Parties is attached hereto as **Exhibit E**. The Final Judgment and Order shall provide, *inter alia*, that:

(A) The Agreement is fair, reasonable, and adequate, and in the best interest of the Settlement Class;

(B) The Notice of Settlement fully complied with the requirements of Fed. R. Civ. Pro. 23 and due process, constituted the best notice practicable under the circumstances, and was due and sufficient notice to all persons entitled to notice of this Settlement;

(C) The Action is dismissed without prejudice and without costs. Dismissal without prejudice shall not allow the Parties or any members of the Settlement Class to litigate or otherwise reopen issues resolved by the Final Judgment and Order, or included within the Released Claims, but is “without prejudice” so as to allow the Court to retain exclusive jurisdiction over this action, the Parties, and all Settlement Class Members to determine all matters relating in any way to the Final Judgment and Order, the Preliminary Approval Order, or the Agreement, including but not limited to the administration, implementation, interpretation, or enforcement of such orders or Agreement. After the Effective Final Judgment Date (defined below in Paragraph 14), the dismissal of this action will convert from “without” prejudice to “with” prejudice; and

(D) Plaintiff and Settlement Class Members are permanently enjoined and barred from commencing or prosecuting any collateral action either directly, representatively, derivatively, or in any other capacity, whether by a complaint, counterclaim, defense, or otherwise, in any local, state, or federal court, or in any agency, or other authority or forum wherever located.

**14. Finality of Judgment.** The Final Judgment and Order shall be deemed final on the later of (i) the expiration of the time to appeal the Final Judgment and Order with no appeal having been filed, or (ii) if any such appeal is filed, the termination of such appeal on terms which affirm the Final Judgment and Order or dismiss the appeal with no material modification

of the Final Judgment and Order, and (iii) the expiration of the time to obtain any further appellate review of the Final Judgment and Order (“Effective Final Judgment Date”).

**15. Dates of Payment and Voucher Obligations.** Payments of all Valid Claims and distribution of all Savings Vouchers shall be made between sixty (60) and one hundred twenty (120) days after the Effective Final Judgment Date. Attorneys’ fees and costs awarded by the Court to Class Counsel, up to a maximum of \$75,000, and the incentive payment to the Class Representative, up to a maximum of \$2,500, shall be paid within thirty (30) days after the Effective Final Judgment Date.

**16. Option to Withdraw.** Each Party shall have the option to withdraw from the Agreement, and thereby render this Settlement null and void, (i) if any other Party breaches any material provision of the Settlement Agreement or the Preliminary Approval Order, or fails to fulfill any material obligation hereunder or thereunder; (ii) if the attorney general or other authorized officer of the United States or any state, or any representative of any local, state, or federal agency or branch of government, shall have intervened in the Action to object to the Settlement or filed an objection with the Court in writing in opposition to the terms of the Agreement, and the withdrawing Party reasonably believes such intervention or opposition will materially delay or render impracticable or unlikely the final approval of the Settlement; (iii) if more than 500 individuals opt out of the Settlement Class; (iv) if a Settlement Class is conditionally certified on less than a nationwide basis (i.e., fewer than all 50 states); or (v) if upon such other grounds as may be agreed to by the Parties and permitted by the Court. Any election made by a Party to terminate this Agreement pursuant to this Paragraph shall be made no later than seven (7) days prior to the Fairness Hearing. To the extent that the election to terminate is made under subsection (iii) of this Paragraph, the Parties agree to meet and confer in



good faith regarding such election for a period of no less than 14 days after the Party seeking to terminate notifies the other Parties of its intention to terminate.

**17. Effect of Withdrawal/Rejection.** In the event that (i) Plaintiff or BRL withdraws from the Agreement pursuant to Paragraph 16; (ii) the Agreement, Preliminary Approval Order, and Final Judgment and Order are not approved in all material respects by the Court; or (iii) the Agreement, Preliminary Approval Order, or Final Judgment and Order are reversed, vacated, set aside, overturned or modified in any material respect by the Court presiding over the Action, or by any other court; then (a) the Agreement shall become null and void; (b) BRL shall cease to have any obligation under this Agreement, except for all notice and administration costs incurred as of the date the Settlement Administrator is notified that the Agreement has become null and void; (c) the Action shall be deemed to revert to its status as of the date and time immediately prior to the execution of this Agreement, and the Action may continue as if this Agreement had never been executed; and (d) any and all orders entered pursuant to the Agreement shall be deemed vacated, including, without limitation, any order certifying or approving certification of the Settlement Class; provided, however, that if any Party hereto individually appeals such ruling and the Agreement and Final Judgment and Order are upheld on appeal, then the Agreement and Final Judgment and Order shall be given full force and effect according to their terms. In the event that the Agreement is deemed null and void, the Parties shall not refer to the fact or terms of this Agreement to establish liability or otherwise support the Parties' substantive positions in the Action.

### **RELEASES**

**18. Release.** Upon final approval of this Settlement and entry of Judgment dismissing the Action, the Plaintiff and the Settlement Class (hereafter the "Plaintiff Releasing

Parties”) fully, finally, and forever settle, release, relinquish and discharge any and all Released Claims against the Released Parties.

(A) The “Plaintiff Releasing Parties” include the Plaintiff and all of the Settlement Class Members, their spouses and former spouses, heirs, executors, administrators, representatives, agents, and assigns.

(B) The “Released Parties” are BRL, including but not limited to its past and present affiliated or related parent or subsidiary corporate entities, affiliates and related entities, as well as its investors, advisors, members, agents, directors, scientists, officers, owners, managers, agents, endorsers, advertisers and employees whether in their individual or official capacities, and, as to any such individuals, including their spouses, heirs, executors, administrators, representatives, agents, and assigns. The “Released Parties” shall also include all retailers, vendors, distributors, and resellers who sell or have sold the Product, third party entities who have displayed advertisements for the Product, as well as any and all third parties who participated in or contributed to the development of the advertising, endorsement, or marketing of the Product, including these entities’ respective directors, officers, managers, and employees, whether in their individual or official capacities.

(C) The “Released Claims” are all claims, causes of action, demands, judgments, damages, liabilities, whether known or unknown, contingent or non-contingent, including but not limited to, any and all attorneys’ fees, costs, expenses, disbursements and interest, which the Plaintiff Releasing Parties now own or hold or have at any time owned or held, against the Released Parties and which arise out of or are in any way connected with the advertising, labeling, branding, endorsement, marketing or sale of the Product. Released Claims specifically include, but are not limited to, any legal or equitable claims of any type or

nature that arise out of or are in any way connected with the allegations presented in the Action, or that could have been presented in the Action, and those claims that are based upon or related to violations of any state or federal statute or regulation, interest, penalties, attorney's fees, costs, or disbursements, or any other claim for damages not specifically described above.

(D) Without limiting the foregoing, the Released Claims specifically extend to claims that the Plaintiff Releasing Parties do not know or suspect to exist in their favor as of the date of Preliminary Approval of this Settlement. In connection with such waiver and relinquishment, Plaintiff, on behalf of herself individually and in her representative capacities, and all Settlement Class Members are deemed to acknowledge that they are aware that they may hereafter discover facts in addition to, or different from, those facts which they now know or believe to be true with respect to the subject matter of this Agreement, but that it is their intention to release fully, finally and forever all Released Claims, and in furtherance of such intention, the release of the Released Claims will be and remain in effect notwithstanding the discovery or existence of any such additional or different facts. **In addition, Plaintiff, individually and on behalf of the Plaintiff Releasing Parties, specifically understands that she may later discover additional injuries or damages that fall within the definition of "Released Claims" set forth above and that are not known to her at this time. This Agreement specifically applies to such later discovered injuries or damages, and Plaintiff, individually and on behalf of the Plaintiff Releasing Parties, specifically accepts the risk that she may later discover such injuries or damages.**

(E) With respect to the "Released Claims" as defined above, the Plaintiff Releasing Parties hereby expressly waive and release, upon this Agreement becoming final or

effective, any and all provisions, rights and benefits conferred by section 1542 of the California Civil Code which provides:

Section 1542. General Release—Claims Extinguished. A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

The Plaintiff Releasing Parties also expressly waive and release any and all provisions, rights and benefits conferred on them by a statute, regulation or ordinance of any other jurisdiction which is similar to Section 1542, with respect to the “Released Claims” as defined above.

### **MISCELLANEOUS PROVISIONS**

**19. Interpretation.** This Agreement contains the entire agreement among the Parties hereto and supersedes any prior discussions, agreements or understandings among them. All terms are contractual. In the event of any alleged ambiguity, there will be no presumption or construction against either side as the drafter.

**20. Headings.** The headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

**21. No Rescission on Grounds of Mistake.** The Parties acknowledge that they have conducted their own investigations of the matters covered by this Agreement to the extent they have deemed it necessary to do so. Therefore, the Parties agree that they will not seek to set aside any part of this Agreement on the grounds of mistake. Moreover, the Parties understand, agree, and expressly assume the risk that any fact not recited, contained, or embodied in the Agreement may turn out hereinafter to be other than, different from, or contrary to the facts now known to them or believed by them to be true, and further agree that this Agreement shall be

effective in all respects notwithstanding and shall not be subject to termination, modification, or rescission by reason of any such difference in facts.

22. **Governing Law.** This Agreement shall be interpreted in accordance with the laws of the State of New Jersey.

23. **Execution in Counterparts.** This Agreement may be executed in one or more counterparts and delivered by facsimile to counsel. All executed counterparts, including those delivered to counsel by facsimile, and each of them shall be deemed to be one and the same instrument. A facsimile copy shall be considered an original for all purposes.

24. **No Admission.** The Parties specifically understand that the promises made in accordance with this Agreement are not to be construed as an admission by any of the Parties or Released Parties for any purpose and understand that the Parties and the Released Parties all deny liability for the allegations made in the Action. Plaintiff further understands that this settlement has been made for business reasons. Nothing in this agreement is to be construed as BRL agreeing that this case was appropriate for class action status or certification.

25. **Modifications Only in Writing and Authorization of Class Counsel.** This Agreement may be amended or modified only by a written instrument signed by all of the undersigned parties or their successors-in-interest; except that Plaintiff, individually and as Class Representative, expressly authorize Class Counsel to take all appropriate action required or permitted to be taken by the Settlement Class pursuant to this Agreement to effectuate its terms, and also expressly authorize Class Counsel to enter into such modifications or amendments to this Agreement on behalf of the Settlement Class as Class Counsel deem appropriate. This Settlement Agreement reflects the entire agreement of Plaintiff, the Settlement Class and BRL

relative to the subject matter hereof and supersedes all prior or contemporaneous oral or written understandings, statements, representations, or promises.

**26. Exhibits Incorporated by Reference.** Each and every exhibit to this Agreement is incorporated herein by this reference as though fully set forth herein.

**27. Legal Representation.** The Parties to this Agreement acknowledge that they have been represented by qualified legal counsel both in connection with the Action and in connection with the negotiation, drafting, and execution of this Agreement. Accordingly, the language used in this Agreement will be deemed to be language chosen by all parties hereto to express their mutual intent, and no rule of strict construction against any party hereto will apply to any term or condition of this Agreement.

**28. Commercially Reasonable Efforts.** The parties agree to cooperate in the execution of such documents and pleadings as are reasonably necessary and appropriate to obtain approval of and implementation of this Agreement, and to use commercially reasonable efforts to perform all terms of this Agreement.

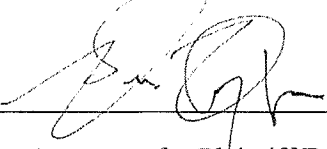
**29. Confidentiality.** The Parties agree not to issue a press release or make any other statement regarding the Action or the resolution of the Action, other than as required to carry out the terms of this Agreement.

IN WITNESS WHEREOF, the parties enter into this Agreement this \_\_\_ day of February, 2012.

FRANCES O'BRIEN

*Frances O'Brien Feb 22, 2012*

HAROLD M. HOFFMAN, ESQ.

 2/22/12  
\_\_\_\_\_  
Attorneys for Plaintiff Frances O'Brien and the Settlement Class


BRAIN RESEARCH LABS, LLC

By \_\_\_\_\_  
Richard Cote, Managing Member

MANATT, PHELPS & PHILLIPS, LLP

By \_\_\_\_\_  
Kenneth Friedman, Esq.  
Attorneys for Defendant Brain Research Labs, LLC

HAROLD M. HOFFMAN, ESQ.

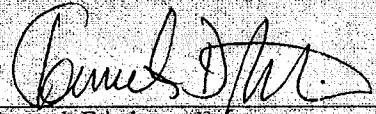
 2/22/12

Attorneys for Plaintiff Frances O'Brien and the Settlement Class

BRAIN RESEARCH LABS, LLC

By  2/22/12  
Richard Cole, Managing Member

MANATT, PHELPS & PHILLIPS, LLP

By  2/22/12  
Kenneth Friedman, Esq.

Attorneys for Defendant Brain Research Labs, LLC



**EXHIBIT A**

**O'Brien v. Brain Research Labs, LLC, No. 12-cv-00204 (D.N.J.)**

**CLAIM FORM**

**NOTE: There are two different benefit options on this claim form. You may select one of the benefit options described below. Your claim form must be completed online on or before [date].**

**Instructions for completing this form are found below.** Please fill out the information below completely. If the information you provide is insufficient to determine whether you are a Settlement Class Member, your claim may be rejected.

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Email Address: \_\_\_\_\_ Phone Number: \_\_\_\_\_

If you have purchased at least one bottle of Procera AVH ("the Product") after January 1, 2005 and have not received a refund for any of your purchases of the Product, you are entitled to one of the benefits described below:

Select *one*:

\_\_\_\_\_ **Cash Payment of twenty dollars (\$20)**

*OR*

\_\_\_\_\_ **Savings Voucher for 50% off of the one-time purchase** of one of following products, which retail for between \$19.95 and \$69.95: (1) Procera AVH; (2) Ceraplex; (3) Omega-3 DHA; (4) Gabarest; or (5) 20/20 BrainPower Book. Please see [www.brainresearchlabs.com](http://www.brainresearchlabs.com) for more information on any of these products.

**I wish to participate in the Settlement of the lawsuit entitled *O'Brien v. Brain Research Labs, LLC*, United States District Court for the District of New Jersey Case No. 12-cv-00204, and receive the Settlement benefit selected above. By signing this Claim Form, I understand that I am releasing Brain Research Labs, LLC from any claims related to the advertising, marketing, labeling, or branding of Procera AVH.**

**I acknowledge that I purchased Procera AVH at least one time after January 1, 2005, and that I have not previously received a refund or debit/credit card chargeback for the Product.**

**By clicking the "Agree and Submit" button, I am affixing my electronic signature to this claim form, and agree that it shall have the same force and effect as if I had manually signed the claim form.**

**INSTRUCTIONS FOR COMPLETION OF THIS CLAIM FORM:**

1. Please type all information carefully.
2. You may submit a claim(s) only if you purchased Procera AVH between January 1, 2005 and [date].
3. If your claim(s) is valid and timely, you may recover, at your election, either \$20 or a savings voucher for 50% off of the purchase price of any of the products listed on the claim form. A check or savings voucher (whichever is selected) will be sent to the individual whose name appears on the claim form either by email or regular mail.

**EXHIBIT B**

## NOTICE OF PROPOSED CLASS ACTION SETTLEMENT

*O'Brien et al. v. Brain Research Labs, LLC*

Case No. 12-cv-00204 (United States District Court for the District of New Jersey)

This is a notice about a proposed class action settlement involving advertisements for Procera AVH (the "Product"). Plaintiff in this case alleges that the advertising and marketing for the Product contains false and misleading information about the benefits and efficacy of the Product. Defendant Brain Research Labs, LLC ("BRL") denies the claims and denies any wrongdoing.

**Am I included?** If you purchased Procera AVH between January 1, 2005 and [date], you are included in this Settlement. More information is available at [website].

**What do I get?** If you are entitled to relief, you may submit a claim to receive either a cash payment of \$20 or a savings voucher for 50% off of the purchase of certain products sold by BRL. There is a chance that class members with valid claims who elect to receive the \$20 cash payment will receive less than \$20 if the amount of valid claims exceed \$500,000. The settlement also provides prospective relief in the form of advertising and labeling modifications.

**How do I receive payment or a savings voucher?** In order to receive payment or a savings voucher under the settlement, you must submit a claim form. You may do so online at [website], which contains additional information about how to submit a claim. The deadline to submit a claim form is [date].

**Additional rights.** If you participate in this settlement, you will not be able to individually sue BRL for any claims that are part of the settlement. If you would prefer not to participate in the settlement and instead initiate your own lawsuit, you must notify us that you would like to exclude yourself or "opt out" of the settlement. If you do not exclude yourself or "opt out" but disagree with any part of the settlement, you may object to the settlement by [date]. The Court will hold a hearing on [date] (**date subject to change**) to consider whether to approve the settlement and a request for attorneys' fees of up to \$75,000, a class representative award of \$2,500, and to consider a number of other important legal issues. The Court has appointed attorneys to represent the Settlement Class. However, you may hire an attorney at your own expense.

**For more information,** including obtaining a more detailed notice, claim form, a copy of the Settlement Agreement and other court documents, please visit the website [insert], or call [toll-free number].

**PLEASE DO NOT CONTACT THE COURT OR THE JUDGE IN THIS CASE**

## **EXHIBIT C**

**NOTICE OF PROPOSED CLASS ACTION SETTLEMENT**

*O'Brien, et al. v. Brain Research Labs, LLC*

**Case No. 12-cv-00204 (United States District Court for the District of New Jersey)**

**If you purchased Procera AVH between January 1, 2005 and [date], you may be part of a class action settlement.**

**IMPORTANT**

**PLEASE READ THIS NOTICE CAREFULLY**

**THIS NOTICE RELATES TO THE PENDENCY OF A CLASS ACTION LAWSUIT AND IF YOU ARE A SETTLEMENT CLASS MEMBER, CONTAINS IMPORTANT INFORMATION ABOUT YOUR RIGHTS TO MAKE A CLAIM UNDER THE SETTLEMENT OR TO OBJECT TO THE SETTLEMENT**

*(A federal court has authorized this notice. It is not a solicitation from a lawyer.)*

Your legal rights are affected whether or not you act. Please read this notice carefully.

<b>YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT</b>	
<b>SUBMIT A CLAIM FORM COMPLETED ONLINE BY [DATE]</b>	The only way to receive a cash payment or savings voucher.
<b>EXCLUDE YOURSELF FROM THE CLASS BY [DATE]</b>	Receive no payment or savings voucher. This is the only option that allows you to pursue claims alleged in the Action against the Defendants by filing your own lawsuit at your own expense.
<b>COMMENT BY [DATE]</b>	Write to the Court about why you do, or do not, like the Settlement. You must remain in the Settlement Class to comment in support of or in opposition to the Settlement, and you must appear at the hearing discussed below to have any objection to the Settlement considered by the Court.
<b>ATTEND A HEARING ON [DATE]</b>	Ask to speak to the Court about the fairness of the Settlement. If you file an objection to the Settlement, you must attend the hearing in order for the Court to consider your objection.  <i>(The date and time of the final fairness hearing is subject to change by Court Order. See Question No. 10 below.)</i>
<b>DO NOTHING</b>	Receive no payment or savings voucher, and give up your rights to pursue your own lawsuit at your own expense.

- These rights and options, and the deadlines to exercise them, are explained in this notice.

- The Court overseeing this case still has to decide whether to approve the Settlement. Payments and distribution of vouchers will be made if the Court approves the Settlement and after any appeals are resolved.

## **1. What is this notice and why should I read it?**

This notice is to inform you of the settlement of a class action lawsuit entitled *O'Brien, et al. v. Brain Research Labs, LLC*, No. 12-cv-00204 (the “Action”), brought on behalf of the Settlement Class, and pending in the United States District Court for the District of New Jersey. You need not live in New Jersey to get a benefit under the Settlement. The Court has granted preliminary approval of the Settlement and has set a final hearing to take place on [date and time] in the Martin Luther King, Jr. Federal Building & U.S. Courthouse, located at 50 Walnut Street, Newark, New Jersey 07101, to determine if the Settlement is fair, reasonable and adequate, and to consider the request by Class Counsel for attorneys’ fees, and an incentive award for the Class Representative. This notice describes the Settlement. Your rights and options—**and the deadlines to exercise them**—are explained in this notice. Your legal rights are affected regardless of whether you act.

## **2. What is a class action lawsuit and what is this lawsuit about?**

A class action is a lawsuit in which one or more plaintiffs—in this case, the individual Frances O’Brien (“Plaintiff”)—sue on behalf of themselves and other people who have similar claims. Here, Plaintiff has sued on behalf of everyone in the United States who may have similar claims. Plaintiff has decided to settle the claims against the Defendant on behalf of all members of the nationwide Settlement Class by entering into a written settlement agreement called “Settlement Agreement.” The individuals on whose behalf the Settlement has been made are called “Settlement Class Members.” The individuals who make up the Settlement Class (i.e. the Settlement Class Members) are described in Question No. 4 below.

The Settlement has already been preliminarily approved by the Court. Nevertheless, because the settlement of a class action determines the rights of all members of the proposed class, the Court in which this lawsuit is pending must give final approval to the Settlement before it can take effect.

The Court has conditionally certified the Settlement Class for settlement purposes only, so that members of the Settlement Class can be given this notice and the opportunity to exclude themselves from the Settlement Class, voice their support or opposition to final approval of the Settlement, and explain how those who do not exclude themselves from the Settlement Class may submit a Claim Form to get the relief offered by the Settlement. If the Settlement is not given final approval by the Court, or the Parties terminate it, the Settlement will be void, and the lawsuit will continue as if there had been no Settlement and no certification of the Settlement Class.

In this case, Plaintiff is Frances O’Brien, a resident of the state of New Jersey. The Defendant is Brain Research Labs, LLC (“BRL” or “Defendant”). Together, Plaintiff and Defendant are referred to in this notice as the “Parties.”

Defendant sells a product called Procera AVH (the “Product”), designed to help brain functioning. Defendant sells the Product primarily through direct marketing channels (i.e. infomercials and on its website), but has also sold the Product at select retail establishments.



In January 2012, Plaintiff filed a lawsuit against Defendant in the United States District Court for the District of New Jersey. Plaintiff's complaint alleged that various claims made in Defendant's advertising and marketing for the Product were false and misleading. Plaintiff seeks to certify a nationwide class. Defendant denies all wrongdoing.

### **3. Why is there a settlement?**

The Court has not decided in favor of either side in the case. Defendant denies all allegations of wrongdoing or liability against it and asserts that its conduct was lawful. Defendant is settling to avoid the expense, inconvenience, and inherent risk and disruption of litigation. Plaintiff and her attorneys believe that the Settlement is in the best interests of the Settlement Class because it provides an appropriate recovery for Settlement Class Members now while avoiding the risk, expense, and delay of pursuing the case through trial and any appeals.

### **4. Who is included in the settlement?**

The class covered by the Settlement (the "Settlement Class") is defined as follows: All residents of the United States who purchased Procera AVH from January 1, 2005 to [date] through direct marketing channels or through retail. Purchasers who have received a refund or debit/credit card chargeback for the purchase price for one or more bottles of the Product at any time are NOT included in the Settlement Class.

### **5. What does the settlement provide?**

#### **Cash Payments or Savings Vouchers to Settlement Class Members.**

Settlement Class Members with Valid Claims shall be eligible to receive *either*: (i) a single cash payment of twenty dollars (\$20) (the "Cash Payment"); *or* (ii) a savings voucher for 50% off of the subsequent purchase of any of the following BRL products: (1) Procera AVH; (2) Ceraplex; (3) Omega-3 DHA; (4) Gabarest; or (5) 20/20 BrainPower Book (the "BRL Products"), each of which has a manufacturer's suggested retail price (MSRP) of between \$19.95 and \$69.95 per unit (the "Savings Voucher").

**Cash Payments.** BRL agrees to pay up to \$500,000 in Cash Payments to Settlement Class Members with Valid Claims. If the amount of the Valid Claims submitted requesting a Cash Payment exceeds \$500,000, then the amount paid to each Settlement Class Member who submitted a Valid Claim requesting a Cash Payment shall be reduced on a pro rata basis so that the total payments made by BRL pursuant to this Settlement shall not exceed \$500,000.

**Savings Vouchers.** Each Settlement Class Member may use one (1) Savings Voucher towards the purchase of the BRL Products. The Savings Vouchers will be transferrable, will not have any expiration date, and will not contain any other restrictions. There will be no limit to the number of Savings Vouchers that may be distributed to Settlement Class Members pursuant to this Settlement.

The Cash Payments and Savings Vouchers will be distributed by email or U.S. Mail.

**Process.** To be eligible for a payment pursuant to the Settlement, a Settlement Class Member must submit a claim online by going to [website] that (i) is dated (i.e. completed and electronically submitted) by [date], (ii) contains all of the required information set forth in the claim form, and (iii) is electronically signed by the Settlement Class Member submitting the claim.

### **Prospective Relief.**

As part of the Settlement, BRL has agreed to make some revisions to the advertising and marketing of the Product. For a period of two (2) years following the effective date of the final judgment approving this Settlement, or once that time has expired with no appeal having been filed, or when any appeal(s) that has been filed is conclusively resolved, BRL has agreed not make any of the following statements in any advertising or marketing unless such statement is (a) found not to violate the law, (b) found to be permissible by a self-regulatory advertising entity or body, or (c) supported by an appropriate scientific or clinical study:

(i) That the Product or any of its ingredients “will protect the brain following a head injury or stroke.”

(ii) That the Product or any of its ingredients “will accelerate the healing of damaged neurons.”

(iii) That the Product or any of its ingredients “will increase levels of nerve growth factor.”

(iv) That the Product or any of its ingredients “will protect the brain or the liver from the harmful byproducts of alcohol.”

(v) That the Product or any of its ingredients “will reduce depression.”

(vi) That the Product or any of its ingredients “will remove or help remove lipofuscin.”

(vii) That the Product or any of its ingredients are “clinically shown to quickly improve energy.”

(viii) That the Product or any of its ingredients “will improve or increase IQ.”

(ix) That the Product or any of its ingredients “are deemed safe and effective by the FDA.”

(x) That the Product or any of its ingredients “are key, vital or brain essential nutrients that cannot be obtained from food.”

(xi) That the Product or any of its ingredients “will prevent, delay the onset of, reduce the effects of, treat, or cure Alzheimer’s Disease or dementia.”

As part of the Settlement, BRL has also agreed to file a “new dietary ingredient” application with the Federal Drug Administration (the “FDA”) within 180 days after the FDA clarifies the requirements for such an application, to the extent that such final guidance document requires any such filing(s).

## **6. Who represents the Settlement Class?**

**Class Representative.** For purposes of the Settlement, the Court has appointed Plaintiff Frances O’Brien to serve as the class representative.

**Class Counsel.** The Court has approved the appointment of Harold M. Hoffman, Esq. as Class Counsel. You will not be charged for the services of Class Counsel. If you want to be represented by your own lawyer, you may hire one at your own expense.

From the beginning of the case in January 2012 to the present, Class Counsel has not received any payment for his services in prosecuting the case or obtaining the Settlement, nor has he been reimbursed for any out-of-pocket expenses they have incurred. Class Counsel will apply to the Court for an award of attorneys’ fees and actual expenses (including court costs) in a total amount not to exceed \$75,000. Defendant has agreed not to oppose Class Counsel’s application for an award of up to \$75,000 in attorneys’ fees and expenses. If the Court approves the attorneys’ fee application, it will be paid by Defendant. The Settlement Class Members will not have to pay anything toward the fees or expenses of Class Counsel. Class Counsel will seek final approval of the Settlement on behalf of all Settlement Class Members. You may hire your own lawyer to represent you in this case if you wish, but it will be at your own expense.

## **7. How can I exclude myself from the Settlement Class?**

You can get out of the Settlement and the Settlement Class by “excluding” yourself (also called “opting out”). If you exclude yourself, you will not be able to submit a claim form, and you will not be entitled to claim any of the relief offered by the Settlement. If you choose to exclude yourself from the Settlement Class, you may pursue whatever legal rights you may have in any separate proceeding if you choose to do so, but you will have to do so at your own expense.

To exclude yourself from the Settlement Class, you must send a letter saying that you want to be excluded from the class in *O’Brien, et al. v. Brain Research Labs, LLC*, No. 12-cv-00204. Your exclusion request must include your name, address, telephone number, signature, and a signed statement to the effect that: “I hereby request to be excluded from the proposed Settlement Class in *O’Brien, et al. v. Brain Research Labs, LLC*, No. 12-cv-00204.” **Your exclusion request must be postmarked no later than [date], and sent to the Settlement Administrator at the following address: [Gilardi & Co., insert address].**

A request for exclusion that does not include all the above information, that is sent to an address other than the one listed above, or that is not received on time, will not be valid and the person(s) asking to be excluded will be considered a member(s) of the Settlement Class, and will be bound as a Settlement Class Member(s) by the Settlement.

If you elect to opt-out, you will (i) not have any rights as a Settlement Class Member pursuant to the Settlement, (ii) not be able to receive any payment or voucher as provided herein, (iii) not be bound by any further orders or judgments in this case, and (iv) remain able to pursue the claims

alleged in the case against Defendant by filing your own lawsuit at your own expense. If you proceed on an individual basis, you might receive more, or less, of a benefit than you would otherwise receive under this Settlement, or no benefit at all.

#### **8. How can I tell the Court what I think about the Settlement?**

If you do not exclude yourself from the Settlement Class, you or your attorney can comment in support of or opposition to the Settlement and have the right to appear before the Court to do so. **Your objection to or comment on the Settlement must be submitted in writing to the Settlement Administrator at the following address: [Gilardi & Co., insert address], by [date].** You must also send copies of your comment or objection to the Court and the attorneys for the Parties at the following addresses:

##### **Clerk of the Court**

Clerk of the Court  
Martin Luther King Jr.  
Federal Building & U.S.  
Courthouse  
50 Walnut Street  
Newark, NJ 07101

##### **Settlement Class Counsel**

Harold M. Hoffman, Esq.  
240 Grand Avenue  
Englewood, NJ 07631

##### **Defendants' Counsel**

Robert H. Platt, Esq.  
Manatt Phelps Phillips LLP  
11355 W. Olympic Blvd.  
Los Angeles, CA 90064

The objection or comment must be in writing and include the case name *O'Brien, et al. v. Brain Research Labs, LLC*, No. 12-cv-00204, and (a) the Settlement Class Member's full name and current address; (b) a signed declaration that he or she is a Settlement Class Member; (c) the specific grounds for the objection or comment; (d) all documents or writings that such Settlement Class Member desires the Court to consider; and (e) notice of intention to appear. The Court will only consider objections from Settlement Class Members who appear at the fairness hearing either on their own behalf or through counsel (see Question No. 10 below for information on the fairness hearing). If you intend to appear at the fairness hearing through counsel, your comment must also state the identity of all attorneys representing you who will appear at the fairness hearing.

If you do not submit a written comment on the proposed Settlement or the application of Class Counsel for incentive awards and attorneys' fees and expenses in accordance with the deadline and procedure set forth above, and you are not granted relief by the Court, you will waive your right to be heard at the fairness hearing.

If you do not object as described in the notice, and you do not exclude yourself from the Settlement Class, you will be deemed to have consented to the Court's certification of, and jurisdiction over, the Settlement Class, and to have released the Released Claims (defined in the Settlement Agreement).

#### **9. What is the effect of final settlement approval?**

If the Court grants final approval of the Settlement, the Court will enter a final order and judgment, and dismiss the case. The release by Settlement Class Members will then take effect. All Settlement Class Members will release any and all claims, causes of action, demands, judgments, damages, liabilities, whether known or unknown, contingent or non-contingent, which they now own or hold or have at any time owned or held, against BRL and the Released

Parties (as defined in Paragraph 18(B) of the Settlement Agreement) and which arise out of or are in any way connected with the Product, including, without limitation, the advertising, labeling, branding, endorsement, marketing or sale thereof. Settlement Class Members will also release any claims that are alleged or could have been alleged in the Action, including but not limited to those claims that rise out of or are in any way connected with the advertising, labeling, branding, endorsement, marketing or sale of the Product. Please refer to Paragraph 18 of the Settlement Agreement for a full description of the claims and persons that will be released upon final approval of the Settlement.

There is a certain amount of time to appeal the final order and judgment. Once that time has expired with no appeal having been filed, or when any appeal(s) that has been filed is conclusively resolved, claim forms and payments under the Settlement will then be processed, and claims payments will then be distributed.

Whether you consider the Settlement favorable or unfavorable, any and all Settlement Class Members who do not exclude themselves from the Settlement Class will not be permitted to continue to assert released claims in any other litigation against BRL or other persons and entities covered by the release. You can obtain a copy of the Settlement Agreement from the Clerk of the Court, online at [insert], or by writing to the Settlement Administrator at [Gilardi & Co., insert address]. If you do not wish to be a Settlement Class Member, you must exclude yourself from the Settlement Class (see Question No. 7 above).

If the Settlement is not approved, the case will proceed as if no settlement had been attempted or reached. There can be no assurance that if the Settlement is not approved and the case resumes, the Settlement Class will recover more than is provided for under the Settlement, or will recover anything at all.

#### **10. When and where will the Court hold a hearing on the fairness of the Settlement?**

A fairness hearing has been set for [date & time], before Magistrate Judge Patty Shwartz in her courtroom at the United States District Court for the District of New Jersey, Martin Luther King, Jr. Federal Building & U.S. Courthouse, Courtroom PO 10 (Post Office Building), 50 Walnut Street, Newark, New Jersey 07101. At the hearing, the Court will hear any comments, objections, and arguments concerning the fairness of the proposed settlement, including the amount requested by Class Counsel for attorneys' fees and expenses. If you have filed an objection to the Settlement, you or your own lawyer need to attend this hearing to have the objection considered by the Court.

**Note:** The date and time of the fairness hearing are subject to change by Court Order.

#### **11. Do I have to come to the fairness hearing? May I speak at the hearing?**

You do not need to attend the fairness hearing to remain a Settlement Class Member or submit a claim for a cash payment or savings voucher. You or your own lawyer may attend the hearing if you wish, at your own expense. However, if you have filed a written objection to the Settlement, you must attend the fairness hearing on your own behalf or through your own counsel in order for the objection to be considered by the Court.

If you do not exclude yourself from the Settlement Class, you may ask the Court for permission to speak at the hearing concerning the proposed Settlement or the application of Settlement Class Counsel for attorneys' fees and expenses by following the instructions in Question No. 8 above.

**12. How do I receive my share of the Settlement?**

If you do not exclude yourself from the Settlement Class, and would like to receive money or a savings voucher, you must submit a timely and valid claim form as set forth in the answer to Question No. 5 above. **Claim forms must be submitted online by [date].** You can download a copy of the claim form online at [insert].

**13. What happens if I do nothing at all?**

If you do nothing, you will receive no payment or savings voucher from the Settlement. You will still be part of the Settlement Class, however, and subject to the release described in Paragraph 18 of the Settlement Agreement, this means you will not be permitted to continue to assert released claims in any other case against BRL or other persons or entities covered by the release. Please refer to Paragraph 18 of the Settlement Agreement for a full description of the claims and persons who will be released upon final approval of the Settlement.

**14. Where do I get additional information?**

This notice provides only a summary of the matters relating to the Settlement. For more detailed information, you may wish to review the Settlement Agreement. You can view the Settlement Agreement and get more information at [website]. You can also get more information by calling toll-free [number]. The Settlement Agreement and all other pleadings and papers filed in the case are available for inspection and copying during regular business hours at the office of the Clerk of the United States District Court for the District of New Jersey, at the Martin Luther King, Jr. Federal Building & U.S. Courthouse, 50 Walnut Street, Newark, New Jersey 07101.

If you would like additional information, you can write to Class Counsel at the address listed in Question No. 8 above.

**PLEASE DO NOT CONTACT THE COURT, THE JUDGE, OR THE DEFENDANTS WITH QUESTIONS ABOUT THE SETTLEMENT**

**EXHIBIT D**

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY

FRANCES O'BRIEN, individually and in  
behalf of the class of purchasers of *Procera*  
*AVH*,

Plaintiff,

-against-

BRAIN RESEARCH LABS, LLC,

Defendant.

2:12-cv-00204-FSH-PS

**PRELIMINARY APPROVAL ORDER**

This matter having come before the Court on Plaintiffs' motion for preliminary approval of a proposed class action settlement of the above-captioned action (the "Action") between Plaintiff Frances O'Brien ("Plaintiff") and Defendant Brain Research Labs, LLC ("BRL" or "Defendant"), set forth in the Settlement Agreement between Plaintiff and Defendant (the "Settlement Agreement"), and the Court having duly considered the papers and arguments of counsel, the Court hereby finds as follows:

1. Unless defined herein, all defined terms in this Order shall have the respective meanings ascribed to the same terms in the Settlement Agreement.
2. The Court has conducted a preliminary evaluation of the Settlement set forth in the Settlement Agreement for fairness, adequacy, and reasonableness. Based on this preliminary evaluation, the Court finds that (i) there is probable cause to believe that the Settlement is fair, reasonable, and adequate; (ii) the Settlement has been negotiated at arm's length between experienced attorneys familiar with the legal and factual issues of this case; (iii) the Settlement appears to be free of collusion among the Parties or any other indicia of



unfairness; (iv) the Settlement is within the range of possible final judicial approval sufficient to warrant sending notice to Settlement Class Members; and (v) the Settlement is in the best interest of the Settlement Class. Therefore, the Court grants preliminary approval of the Settlement.

3. Pursuant to Federal Rule of Civil Procedure 23(b)(3), and for settlement purposes only, the Court conditionally certifies the proposed Settlement Class, consisting of:

All residents of the United States who purchased Procera AVH from January 1, 2005 through [date] through direct marketing channels or through retail. Purchasers who have received a refund or debit/credit card chargeback of the purchase price for one or more bottles of the Product at any time shall NOT be included in the Settlement Class.

4. For settlement purposes only, the Court hereby preliminarily approves the appointment of Frances O'Brien as Class Representative.

5. For settlement purposes only, the Court preliminarily approves the appointment of the following as Class Counsel:

Harold M. Hoffman, Esq.  
240 Grand Avenue  
Englewood, NJ 07631

6. On [date & time] or at such other date and time later set by Court Order, this Court will hold a Fairness Hearing on the fairness, adequacy, and reasonableness of the Settlement Agreement, and to determine whether (a) final approval of the Settlement should be granted, and (b) Class Counsel's application for attorneys' fees and expenses, and an incentive award to Plaintiff, should be granted, and in what amount. No later than [date], Plaintiff must file his papers in support of final settlement approval and in response to any objections, as well as Class Counsel's application for attorneys' fees and expenses. Defendant may (but is not required to) file papers in support of final settlement approval, so long as it does so no later than [date].

7. Pursuant to the Settlement Agreement, [name] is hereby appointed as Settlement Administrator and shall be required to perform all the duties of the Settlement Administrator as

set forth in the Settlement Agreement and this Order. To aid in the efficient submission of claims, the Settlement Agreement provides for claimants to submit claims on-line without the need for a manual signature. However, by submitting an on-line claim form, such claimants shall be bound to the same extent as if they had used a manual signature.

8. The Court approves the proposed plan for giving notice to the Settlement Class by email, U.S. Mail, and establishing a settlement website, as more fully described in the Settlement Agreement. The plan for giving notice, in form, method, and content, fully complies with the requirements of Rule 23 and due process, constitutes the best notice practicable under the circumstances, and is due and sufficient notice to all persons entitled thereto. The Court hereby directs the Parties and Settlement Administrator to complete all aspects of the notice plan no later than [date].

9. Any person who meets the definition of Settlement Class Member and who wishes to exclude himself/herself as a Settlement Class Member must submit his/her request for exclusion in writing, identifying the case name *O'Brien, et al. v. Brain Research Labs, LLC*, No. 12-cv-00204, and state the name, address, and telephone number of the Settlement Class Member seeking exclusion. Each request must also contain a signed statement that: "I hereby request to be excluded from the proposed Settlement Class in the case *O'Brien, et al. v. Brain Research Labs, LLC*, No. 12-cv-00204." The request must be mailed to the Settlement Administrator at the address provided in the Class Notice and postmarked no later than [date]. A request for exclusion that does not include all of the foregoing information, that is sent to an address other than the one designated in the Class Notice, or that is not received within the time specified, shall be invalid and the person serving such a request shall be deemed a member of the Settlement Class, and shall be bound as a Settlement Class Member by the Settlement. The Settlement Administrator shall promptly forward copies of all requests for exclusion to Class Counsel and counsel for Defendant.

10. Any Settlement Class Member may comment in support of or in opposition to the Settlement; *provided, however*, that all comments and objections must be filed with the

Court and received by Class Counsel and Defendant's counsel prior to the Fairness Hearing. A Settlement Class Member who objects to the settlement needs to appear at the Fairness Hearing (either on his or her own behalf or through counsel) for his or her comment to be considered by the Court. All arguments, papers, briefs, and any evidence that any objector would like the Court to consider must be filed with the Court, with a copy postmarked to Class Counsel and Defendant's counsel, no later than [date]. All objections shall include the caption *O'Brien, et al. v. Brain Research Labs, LLC*, No. 12-cv-00204, and provide: (a) the Settlement Class Member's full name and current address; (b) a signed declaration that he or she is a Settlement Class Member; (c) the specific grounds for the objection; (d) all documents or writings that such Settlement Class Member desires the Court to consider; and (e) a notice of intention to appear. If the Settlement Class Member intends to appear at the Fairness Hearing through counsel, the attorney shall file an entry of appearance with this Court, and deliver the entry of appearance to Class Counsel and counsel for Defendant.

11. Any Settlement Class Member who fails to object in the manner prescribed herein shall be deemed to have waived his or her objections and forever be barred from making any such objections in this Action or in any other action or proceeding. While the declaration described in subparagraph 10(b) is *prima facie* evidence that the objector is a Settlement Class Member, Plaintiff or Defendant or both may take discovery regarding the matter, subject to Court approval. If a Settlement Class Member does not submit a written comment on the proposed Settlement or the application of Class Counsel for attorneys' fees and expenses or the application of Class Representative for an incentive award in accordance with the deadline and procedure set forth in the Class Notice, and the Settlement Class Member is not granted relief by the Court, the Settlement Class Member will waive his or her right to be heard at the Fairness Hearing.

12. Settlement Class Members are preliminarily enjoined from filing, commencing, prosecuting, intervening in, participating in, maintaining as class members or otherwise, directly or indirectly through a representative or otherwise, or receiving any benefits from, any

lawsuit, administrative or regulatory proceeding or order in any jurisdiction, asserting any claims released by this Agreement. In addition, all persons are preliminarily enjoined from filing, commencing or prosecuting a lawsuit as a class action (including by seeking to amend a pending complaint to include class allegations or by seeking class certification in a pending action in any jurisdiction) on behalf of Settlement Class Members, or asserting any claims released by this Agreement. Nothing herein shall require any Settlement Class Member to take any affirmative action with regard to other pending class action litigation in which he or she may be an absent class member.

13. The Settlement Agreement and the proceedings and statements made pursuant to the Settlement Agreement or papers filed relating to the approval of the Settlement Agreement, and this Order, are not and shall not in any event be construed as, offered in evidence as, received in evidence as, and/or deemed to be evidence of a presumption, concession, or an admission of any kind by any of the Parties of (i) the truth of any fact alleged or the validity of any claim or defense that has been, could have been, or in the future might be asserted in the Action, any other litigation, court of law or equity, proceeding, arbitration, tribunal, investigation, government action, administrative proceeding, or other forum, or (ii) any liability, responsibility, fault, wrongdoing, or otherwise of the Parties. Defendant has denied and continues to deny the claims asserted by Plaintiff. Nothing contained herein shall be construed to prevent a Party from offering the Settlement Agreement into evidence for the purposes of enforcement of the Settlement Agreement.

14. The certification of the Settlement Class shall be binding only with respect to the settlement of this Action. In the event that the Settlement Agreement is terminated pursuant to its terms or is not approved by the Court, or such approval is reversed, vacated, or modified in any material respect by this or any other Court, the certification of the Settlement Class shall be deemed vacated, the Action shall proceed as if the Settlement Class had never been certified (including Defendant's right to oppose any subsequent motion for class certification), and no reference to the Settlement Class, the Settlement Agreement, or any documents,

communications, or negotiations related in any way thereto shall be made for any purpose.

**IT IS SO ORDERED.**

Date: \_\_\_\_\_

\_\_\_\_\_  
Honorable Patty Shwartz  
United States Magistrate Judge

**EXHIBIT E**

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY

FRANCES O'BRIEN, individually and in  
behalf of the class of purchasers of *Procera*  
*AVH*,

Plaintiff,

-against-

BRAIN RESEARCH LABS, LLC,

Defendant.

2:12-cv-00204-FSH-PS

**FINAL JUDGMENT AND ORDER**

The Court, having considered the parties' Motion for Final Approval (the "Motion for Final Approval") of the settlement (the "Settlement") of the above-captioned action (the "Action") brought by Plaintiff Frances O'Brien ("Plaintiff") against Defendant Brain Research Labs, LLC ("BRL" or "Defendant"), pursuant to the Settlement Agreement dated February 22, 2012 (the "Settlement Agreement"), having considered all of the submissions and arguments with respect to the Motion for Final Approval, and having held a Fairness Hearing on [date], finds that:

1. Unless defined herein, the capitalized terms in this Order shall have the respective meanings ascribed the same terms in the Settlement Agreement.
2. The Court has jurisdiction over the subject matter of the Action and over all Parties to the Action, including all Settlement Class Members.
3. On [date], this Court preliminarily approved the Settlement and certified, for

settlement purposes, the Settlement Class consisting of:

All residents of the United States who purchased Procera AVH (the “Product”) from January 1, 2005 through [date] through direct marketing channels or through retail. Purchasers who have received a refund or debit/credit card chargeback of the purchase price for one or more bottles of the Product at any time shall NOT be included in the Settlement Class.

4. Notice of Settlement to the Settlement Class has been provided in accordance with the Court’s Preliminary Approval Order, and the substance of and dissemination program for the Notice of Settlement, which included email, U.S. Mail, and the creation of a settlement website, fully complied with the requirements of Federal Rule of Civil Procedure 23 and due process, constituted the best notice practicable under the circumstances, and provided due and sufficient notice to all persons entitled to notice of the Settlement in this Action.

5. The Settlement Agreement was arrived at as a result of arms’-length negotiations conducted in good faith by experienced attorneys familiar with the legal and factual issues of this case, and thus, is supported by Plaintiff and Class Counsel.

6. The Settlement as set forth in the Settlement Agreement is fair, reasonable, adequate, and in the best interest of the Settlement Class in light of the complexity, expense, and duration of litigation and the risks involved in establishing liability and damages and in maintaining the class action through trial and appeal.

7. The consideration provided under the Settlement Agreement constitutes fair value given in exchange for the release of the Released Claims against the Released Parties. The Court finds that the consideration to be paid to Settlement Class Members is reasonable, considering the facts and circumstances of the claims and affirmative defenses asserted in the Action, and the potential risks and likelihood of success of alternatively pursuing a trial on the merits.



8. The persons listed on Addendum A hereto are found to have validly excluded themselves from the Settlement in accordance with the provisions of the Preliminary Approval Order.

**IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED THAT:**

9. The Settlement Agreement is finally approved as fair, reasonable, adequate, and in the best interests of the Settlement Class. The Parties are directed to consummate the Settlement Agreement in accordance with its terms. The Parties and Settlement Class Members who did not timely exclude themselves from the Settlement Class are bound by the terms and conditions of the Settlement Agreement.

10. The following Settlement Class is hereby finally certified, solely for purposes of this Settlement, pursuant to Federal Rule of Civil Procedure 23(b)(3):

All residents of the United States who purchased Procera AVH from January 1, 2005 through [date] through direct marketing channels or through retail. Purchasers who have received a refund or debit/credit card chargeback of the purchase price for one or more bottles of the Product at any time shall NOT be included in the Settlement Class.

11. The requirements of Rule 23(a) and (b)(3) have been satisfied for settlement purposes. The Settlement Class is so numerous that joinder of all members is impracticable; there are questions of law or fact common to the Settlement Class; the claims of Plaintiff are typical of the claims of the Settlement Class; Plaintiff will fairly and adequately protect the interests of the Settlement Class; and the questions of law or fact common to Settlement Class Members predominate over any questions affecting only individual members.

12. The preliminary appointment of the following attorneys as Class Counsel is hereby confirmed:

Harold M. Hoffman, Esq.  
240 Grand Avenue

13. Class Counsel is experienced in class litigation, including litigation of similar claims in other cases, and has fairly and adequately represented the interests of the Settlement Class.

14. The Action is dismissed without prejudice and without costs. However, neither the Parties nor any Settlement Class Member(s) may litigate or otherwise reopen issues resolved by this Final Judgment and Order, or included within the Released Claims. Rather, dismissal is “without prejudice” so as to allow this Court to retain exclusive jurisdiction over this Action, the Parties, and all Settlement Class Members to determine all matters relating in any way to the Final Judgment and Order, the Preliminary Approval Order, or the Agreement, including but not limited to the administration, implementation, interpretation, or enforcement of such orders or Agreement. After the Effective Final Judgment Date (defined in Paragraph 14 of the Settlement Agreement), this Action shall be dismissed with prejudice. Judgment shall be entered without any admission by Defendant of liability or as to the merits of any of the allegations in the Complaint.

15. The Parties are directed to distribute the consideration to the Settlement Class pursuant to Paragraphs 2 and 3 of the Settlement Agreement.

16. The Plaintiff Releasing Parties release and forever discharge the Released Parties from the Released Claims.

a. As used in this Order, the “Plaintiff Releasing Parties” shall mean Plaintiff, each Settlement Class Member (except a member of the Settlement Class who has obtained proper and timely exclusion from the Settlement Class pursuant to Paragraph 11 of the Settlement Agreement), and their spouses and former spouses, heirs, executors, administrators, representatives, agents, and assigns.

b. As used in this Order, the “Released Parties” shall mean BRL, including but not limited to its past and present affiliated or related parent or subsidiary corporate entities, affiliates and related entities, as well as its investors, advisors, members, agents, directors, scientists, officers, owners, managers, agents, endorsers, advertisers and employees whether in their individual or official capacities, and, as to any such individuals, including their spouses, heirs, executors, administrators, representatives, agents, and assigns. The “Released Parties” shall also include all retailers, vendors, distributors, and resellers who sell or have sold the Product, third party entities who have displayed advertisements for the Product, as well as any and all third parties who participated in or contributed to the development of the advertising, endorsement, or marketing of the Product, including these entities’ respective directors, officers, managers, and employees, whether in their individual or official capacities.

c. As used in this Order, the “Released Claims” shall mean all claims, causes of action, demands, judgments, damages, liabilities, whether known or unknown, contingent or non-contingent, including but not limited to, any and all attorneys’ fees, costs, expenses, disbursements and interest, which the Plaintiff Releasing Parties now own or hold or have at any time owned or held, against the Released Parties and which arise out of or are in any way connected with the advertising, labeling, branding, endorsement, marketing or sale of the Product. Released Claims specifically include, but are not limited to, any legal or equitable claims of any type or nature that arise out of or are in any way connected with the allegations presented in the Action, or that could have been presented in the Action, and those claims that are based upon or related to violations of any state or federal statute or regulation, interest, penalties, attorney’s fees, costs, or disbursements, or any other claim for damages not specifically described above.

d. The Plaintiff Releasing Parties hereby fully, finally and forever, settle, release, relinquish and discharge the Released Parties from the Released Claims as of the date of the Final Judgment and Order.

17. The release in Paragraph 16 includes claims that are currently unknown to the Plaintiff Releasing Parties. The release in this Order and the Settlement Agreement discharge the Released Claims, whether now asserted or unasserted, known or unknown, suspected or unsuspected, which now exist, or heretofore existed or may hereafter exist, which if known, might have affected their decision to enter into this release. Each Plaintiff Releasing Party shall be deemed to waive any and all provisions, rights, and benefits conferred by any law of the United States, any state or territory of the United States, or any state or territory of any other country, or principle of common law or equity, which governs or limits a person's release of unknown claims. The Plaintiff Releasing Parties understand and acknowledge that they may hereafter discover facts in addition to, or different from, those facts which they now know or believe to be true with respect to the subject matter of the Agreement, but it is their intention to release fully, finally and forever all Released Claims, and in furtherance of such intention, the release of the Released Claims will be and remain in effect notwithstanding the discovery or existence of any such additional or different facts. Plaintiff Releasing parties also understand that they may later discovery additional injuries or damages that fall within the definition of "Released Claims" and that are not known to them at this time. Plaintiff Releasing Parties specifically accept the risk that they may later discovery such injuries or damages. The foregoing waiver includes, without limitation, an express waiver, to the fullest extent not prohibited by law, by Plaintiff, the Settlement Class Members, and all other Plaintiff Releasing Parties of any and all rights under California Civil Code Section 1542, which provides:

**A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.**

In addition, Plaintiff, Settlement Class Members, and all other Plaintiff Releasing Parties also expressly waive and release any and all provisions, rights, and benefits conferred on them by a statute, regulation, or ordinance of any other jurisdiction which is similar to California Civil Code Section 1542.

18. Plaintiff and Settlement Class Members are permanently enjoined and barred from commencing or prosecuting any collateral action against Defendant arising out of the claims made or that could have been made in the Action regarding the Product, either directly, representatively, derivatively, or in any other capacity, whether by a complaint, counterclaim, defense, or otherwise, in any local, state, or federal court, or in any agency or self-regulating body, or other authority or forum wherever located.

19. For a period of two (2) years following the Effective Final Judgment Date, Defendant shall not make any of the following statements in any advertising or labeling for the Product unless such statement is (a) found not to violate the law, (b) found to be permissible by a self-regulatory advertising entity or body, or (c) supported by an appropriate scientific or clinical study or other competent and reliable evidence that substantiates the representations:

- a. That the Product or any of its ingredients “will protect the brain following a head injury or stroke.”
- b. That the Product or any of its ingredients “will accelerate the healing of damaged neurons.”

- c. That the Product or any of its ingredients “will increase levels of nerve growth factor.”
- d. That the Product or any of its ingredients “will protect the brain or the liver from the harmful byproducts of alcohol.”
- e. That the Product or any of its ingredients “will reduce depression.”
- f. That the Product or any of its ingredients “will remove or help remove lipofuscin.”
- g. That the Product or any of its ingredients are “clinically shown to quickly improve energy.”
- h. That the Product or any of its ingredients “will improve or increase IQ.”
- i. That the Product or any of its ingredients “are deemed safe and effective by the FDA.”
- j. That the Product or any of its ingredients “are key, vital or brain essential nutrients that cannot be obtained from food.”
- k. That the Product or any of its ingredients “will prevent, delay the onset of, reduce the effects of, treat, or cure Alzheimer’s Disease or dementia.”

20. The Court awards to Class Counsel \$75,000 as attorneys’ fees and costs.

21. The Court awards to Plaintiff \$2,500.00 as an incentive award for her role as Class Representative.

22. Without affecting the finality of this judgment, the Court retains exclusive jurisdiction of this Settlement, including without limitation, issues concerning its administration and consummation. The Court also retains exclusive jurisdiction over Defendant, Plaintiff, and Settlement Class Members regarding the Settlement Agreement and this Final Judgment and

Order. Defendant, Plaintiff, and Settlement Class Members are hereby deemed to have submitted irrevocably to the exclusive jurisdiction of this Court for any suit, action, proceeding, or dispute arising out of or relating to the Released Claims, this Order, and the Settlement Agreement, including but not limited to the applicability of the Released Claims, this Settlement Agreement, or this Order. Without limiting the generality of the foregoing, any dispute concerning the Settlement Agreement, including, but not limited to, any suit, action, arbitration, or other proceeding by a Settlement Class Member in which the provisions of the Settlement Agreement are asserted as a defense in whole or in part to any claim or cause of action or otherwise raised as an objection, shall constitute a suit, action, or proceeding arising out of or relating to this Order. Solely for purposes of this suit, action, or proceeding, to the fullest extent possible under applicable law, the Parties hereto and all Settlement Class Members are hereby deemed to have irrevocably waived and agreed not to assert, by way of motion, as a defense or otherwise, any claim or objection that they are not subject to the jurisdiction of this Court, or that this Court is, in any way, an improper venue or an inconvenient forum.

23. This Settlement Agreement and the proceedings and statements made to the Settlement Agreement or papers filed relating to the Settlement Agreement, and this Order, are not and shall not in any event be construed as, offered in evidence as, received in evidence as, and/or deemed to be evidence of a presumption, concession, or an admission of any kind by any of the Parties of (i) the truth of any fact alleged or the validity of any claim or defense that has been, could have been, or in the future might be asserted in the Action, any other litigation, court of law or equity, proceeding, arbitration, tribunal, investigation, government action, administrative proceeding, or other forum, or (ii) any liability, responsibility, fault, wrongdoing,

or otherwise of the Parties. Defendant has denied and continues to deny the claims asserted by Plaintiff. Nothing contained herein shall be construed to prevent a Party from offering the Settlement Agreement into evidence for the purposes of enforcement of the Settlement Agreement.

24. The certification of the Settlement Class shall be binding only with respect to the settlement of this Action. In the event that the Settlement Agreement is terminated pursuant to its terms or the Court's approval is reversed, vacated, or modified in any material respect by this or any other Court, the certification of the Settlement Class shall be deemed vacated, the Action shall proceed as if the Settlement Class had never been certified (including Defendant's right to oppose any subsequent motion for class certification), and no reference to the Settlement Class, the Settlement Agreement, or any documents, communications, or negotiations related in any way thereto shall be made for any purpose.

25. Based upon the Court's finding that there is no just reason for the delay of enforcement or appeal of this Order notwithstanding the Court's retention of jurisdiction to oversee implementation and enforcement of the Settlement Agreement, the Court directs the Clerk to enter final judgment pursuant to Federal Rule of Civil Procedure 54(b).

**IT IS SO ORDERED.**

Date: \_\_\_\_\_

\_\_\_\_\_  
Honorable Patty Shwartz  
United States Magistrate Judge